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Nos. 92-560 and 92-628

In The

Supreme Court of the United States

October Term, 1992

COUNTY OF LOS ANGELES; CITY OF MANHATTAN BEACH; ROBERT PHILOBOSIAN; CAPITAL CITIES/ABC, INC.; WAYNE T. SATZ; CHILDREN'S INSTITUTE INTERNATIONAL AND KATHLEEN "KEE" MACFARLANE,

Petitioners,

vs.

PEGGY MCMARTIN BUCKEY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Ninth Circuit's decision involves a ruling on the relationship between common law malicious prosecution and 42 U.S.C. § 1983?

2. Whether the Ninth Circuit's decision states that Respondent in fact has both substantive due process and equal protection claims?

3. Whether parties who had no privity to a prior criminal proceeding have standing to assert it as a basis for a collateral estoppel defense in a subsequent civil suit?

PARTIES TO PROCEEDINGS

Two separate petitions for Certiorari were filed, No. 92-560 by Petitioners COUNTY OF LOS ANGELES, CITY OF MANHATTAN BEACH and ROBERT PHILOBOSIAN; and No. 92-628 by CAPITAL CITIES/ABC, INC., WAYNE T. SATZ, CHILDRENS INSTITUTE INTERNATIONAL and KATHLEEN "KEE" MACFARLANE. Plaintiff PEGGY MCMARTIN BUCKEY responds to both petitions herein.

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RESTATEMENT OF THE CASE

The Complaint in this action was filed by Respondent PEGGY MCMARTIN BUCKEY in the U.S. District Court, Central District of California on January 19, 1990, following one of the most notorious and longest criminal preliminary hearings in history.

The federal claim alleged in the first count arose under 42 U.S.C. § 1983 for breach of civil rights, and the remaining counts were pendent state law claims for common law conspiracy, defamation and malicious prosecution against some or all Petitioners COUNTY OF LOS ANGELES, CITY OF MANHATTAN BEACH, former Los Angeles County District Attorney ROBERT PHILOBOSIAN ("PHILOBOSIAN"), CHILDREN'S INSTITUTE INTERNATIONAL ("CII"), KATHLEEN "KEE" MACFARLANE ("MACFARLANE"), CAPITAL CITIES/ABC, INC. ("ABC"), AND WAYNE T. SATZ ("SATZ").

In substance, the complaint alleged a loose-knit conspiracy among the public and private party defendants to investigate, prosecute and convict BUCKEY on charges she molested numerous children at the Virginia McMartin Preschool she co-owned with her mother, in violation of BUCKEY's rights under state and federal constitutions and laws for the mutual advantage of Petitioners, **e.g.** PHILOBOSIAN, an appointed District Attorney who needed an election issue; CII employee MACFARLANE, the child abuse interviewer for the public entities and SATZ, an ABC reporter who "broke" the story on the McMartin Preschool, who had an ongoing secret romance with MACFARLANE which was not disclosed until late in the proceedings.

On August 6, 1990 Petitioners (except SATZ) moved to dismiss the complaint and the District Court granted the motion without leave to amend on September 28, 1990. SATZ appeared later and joined the appeal by stipulation. On appeal in the Ninth Circuit, the trial court was overruled and Respondent was granted leave to amend her complaint to allege an equal protection claim.

On March 4, 1992 Petitioners filed for a rehearing or rehearing en banc with the Ninth Circuit which was denied on July 1, 1992, and at that time the Ninth Circuit amended its prior decision solely to note that the decision did not preclude any immunity claims.

SUMMARY OF ARGUMENT

The two Petitions for Certiorari responded to here contain fundamental analytical errors which should preclude granting the Petitions. First, they virtually ignore the precise holding of the 9th Circuit for which review is sought, that Petitioner should have at least one opportunity to amend her civil rights complaint to attempt to state a federal claim based upon existing allegations of outrageous concerted abuses by public and private parties which, if true, look like a nascent claim under the 14th Amendment not yet adequately pleaded. *Leave to amend once is all that was decided below.*

Second, Petitioners ignore the significant facts which distinguish this case from all others cited by Petitioners to support their position. The complaint is not in any sense limited to what Petitioners did to Respondent *prior* to the probable cause finding at her preliminary hearing.

For example, she pleaded that the conspiracy continued *after* she was bound over for trial, such as through a trumped-up publicity campaign, and the fact that *after* leaving office, PHILIBOSIAN continued to support the conspiracy in a defamatory press conference. (Complaint, ¶¶ 24, 26 and 38)

RESPONDENT'S ARGUMENTS FOR DENYING THE PETITION

I. THE ISSUES RAISED BY PETITIONERS CITY, COUNTY AND PHILOBOSIAN WERE NOT EXPRESSLY RULED ON BY THE NINTH CIRCUIT AND ARE NOT NECESSARY TO THE RESULT REACHED BELOW

The public Petitioners base their claim for review solely on the argument that the Ninth Circuit in *Buckey* upheld common law, malicious prosecution as the basis for BUCKEY's § 1983 cause of action, and that the Circuits are supposedly split on whether such a basis for a § 1983 case exists. That is an unduly subtle and intuitive reading of the complaint (which has a separate pendent claim for malicious prosecution) and the opinion. Nowhere in the Ninth Circuit opinion does it state or imply that its basis is malicious prosecution. Its basis is rather a course of conspiratorial conduct amounting to a substantive due process violation. Moreover, the complaint clearly goes beyond the elements of malicious prosecution: (1) lack of probable cause, (2) malice and (3) favorable termination. In the *Buckey* case, the "violation" is what went on before, during, after and even outside the scope of the prosecution. If BUCKEY's § 1983 theory

is correct, she would have a civil rights claim even if she had been convicted, akin to a prisoner's claim that he was beaten in jail which is not barred because there was probable cause to arrest or prosecute.

The public Petitioners' position is also somewhat deceptive in its reliance on state and federal precedents to support their malicious prosecution argument. For example, they cite *Guenther v. Holmgreen*, 738 F.2d 879 (7th Cir. 1984), **cert. denied**, 469 U.S. 1212 (1985), to support the proposition that a probable cause finding at a preliminary hearing precludes subsequent relitigation of that issue, but omit the later opinion from the same court which makes it clear that supposed rule does not apply in a case like BUCKEY'S with quite different and specific allegations.

> "We agree with the district court that the preliminary hearing determination does not preclude relitigation of the probable cause issue. The preliminary hearing concerned the sufficiency of the evidence to establish probable cause. Since the instant claim is more accurately characterized as a challenge to the integrity of the evidence than to its sufficiency, identity of the issues is lacking. . . . In this case Schertz does not claim that the defendants concealed or misrepresented facts actually known to them; therefore, the existence of probable cause bars plaintiff's § 1983 claim." *Schertz v. Waupaca County*, 875 F.2d 578, 581-582 (7th Cir. 1989)

Here, of course, BUCKEY makes precisely the claims that Schertz failed to make, and the prior probable cause finding does not bar her case. It also might be noted that

California law on the collateral estoppel of criminal probable cause on malicious prosection is entirely consistent with this result, starting with *Jaffe v. Stone*, 18 Cal.2d 146 (1941), continuing through with *McGowan v. City of San Diego*, 208 Cal.App.3d 890, 895 (1989), *Sheldon Appel Co. v. Albert & Oliker*, 47 Cal.3d 863, 877 (1989) and most recently *Cook v. Farmers Group, Inc.*, 1 Cal.App.4th 163, 167 (1992).

II. SUPREME COURT REVIEW OF THIS CASE IS UNNECESSARY BECAUSE THE 'PRIVATE' PETITIONERS HAVE MISCONSTRUED THE NINTH CIRCUIT OPINION REGARDING DUE PROCESS AND EQUAL PROTECTION

The Ninth Circuit panel made no evaluation as to the validity of Respondent's equal protection or due process claim, and explicitly stated, "The only issue we confront is whether we should remand to permit Buckey to amend her pleadings." *Buckey v. County of Los Angeles*, 957 F.2d 652, 654 (9th Cir. 1992). The court concluded only that under existing federal law, an amendment of the pleadings was permissible. The court specifically noted no opinion was offered as to whether such a claim could ethically and professionally be filed, only indicating that such a claim was a possibility. *Id.* In fact, the court states the focus of the claim would not be due process violations, but rather equal protection claims, because the procedural remedies which absolved Respondent of criminal liability were made necessary "only because of a wrongful conspiracy of entities and persons acting under the color of state law." *Id.* at 655.

Despite Petitioners' claims to the contrary, liability for these private entities may exist under an equal protection claim where these parties had acted as agents of the state. "Liability must be established by showing that the defendants either personally participated in a deprivation of the plaintiff's rights or caused such a deprivation to occur." [citations omitted] *Bouvia v. County of Los Angeles*, 195 Cal.App.3d 1075, 1087 (1987). The liability of a private party under § 1983 may exist for acting "in concert with" a government, even when the government is immune, **See** *Dennis v. Sparks*, 449 U.S. 24, 27-29 (1980); or if the private parties willfully participate in government denial of constitutional rights. *Arnold v. IBM*, 537 F.2d 1350 (9th Cir. 1981). Private parties can be held to have "conspired" with the state and therefore be subject to § 1983 liability, if the government failed to exercise independent judgment. **See** *Gramemos v. Jewel Companies, Inc.*, 797 F.2d 432, 435-436 (7th Cir. 1986), **cert. denied**, 1075 S.Ct. 1952 (1987).

As stated above, the state delegated its investigatorial duties to CII and MACFARLANE. Consequently, CII and MACFARLANE became state actors whose endeavors have created equal protection liability for themselves as well as the state. Ironically, the McMartin Preschool case has become the national model for how *not* to conduct a child sexual abuse investigation. **See** ABA Journal, July, 1992 at p.36.

Additionally, SATZ and ABC were willing and active participants in the conspiracy and assisted in the deprivation of Respondent's rights by knowingly broadcasting false information to boost news program ratings and to promote the individual careers of both SATZ and his

clandestine paramour MACFARLANE. (Complaint ¶¶ 26 and 29)

III. COLLATERAL ESTOPPEL CANNOT BE ASSERTED BECAUSE THE 'PRIVATE' PARTIES LACK STANDING TO DO SO

To argue collateral estoppel in a civil proceeding, regarding issues determined at a prior criminal proceeding, the prior action must have involved the same parties or their privies. *McGowan v. City of San Diego*, 208 Cal.App.3d 890 (1989). Since ABC and SATZ were not parties to the criminal proceeding, they lack standing to assert collateral estoppel in this civil matter.

Moreover, CII and MACFARLANE cannot have it both ways. If they are independent private actors, they are precluded for lack of standing from asserting collateral estoppel. But if CII and MACFARLANE are parties to the criminal proceeding (and therefore state actors) for purposes of collateral estoppel, then they must also be state actors for purposes of equal protection. Moreover, if parties were permitted to argue collateral estoppel in civil proceedings regarding all issues surrounding a criminal prosecution, then virtually any claim for malicious prosecution would be precluded.

IV. CONCLUSION

The Petitioners are wide of the mark for review by this Court. Indeed, the Petitioners make much ado about not very much. All that Mrs. BUCKEY achieved after great effort and expense, was leave to amend. There is no

far reaching precedent here. Respondent deserves the opportunity to replead her claims against the powers that be who destroyed her entire world.

October 28, 1992

Respectfully submitted,

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APPENDIX

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PEGGY MCMARTIN BUCKEY

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PEGGY MCMARTIN BUCKEY,

Plaintiff,

vs.

COUNTY OF LOS ANGELES; CITY OF MANHATTAN BEACH; ROBERT PHILOBOSIAN; CHILDREN'S INSTITUTE INTERNATIONAL; KATHLEEN "KEE" MACFARLANE; CAPITAL CITIES/ABC, INC.; and WAYNE T. SATZ;

Defendants.

_____/

CIV. No. 90 0293 RG(GHKX)

COMPLAINT FOR DAMAGES FOR VIOLATION OF CIVIL RIGHTS AND OTHER CLAIMS

(Filed Jan. 19, 1990)

JURY TRIAL DEMANDED

Plaintiff alleges:

I. JURISDICTION AND VENUE

1. This action arises under the Federal Civil Rights Act of 1871, 42 U.S.C. Section 1983, and the principles of

pendent jurisdiction. This court has jurisdiction pursuant to 28 U.S.C. Sections 1331, 1332 and 1343.

2. Plaintiff is a California citizen residing in this district, and venue is proper in this District because each of the public entity defendants is located entirely within this District; plaintiff is informed and believes that each of the individual defendants is and was at all times here relevant a resident of this District; and substantially all of the events alleged below occurred within this district. Defendant CAPITAL CITIES/ABC, INC. is a foreign corporation which is incorporated in and has its principal place of business in a state other than California, but is doing business in this district as "ABC Television."

3. The amount in controversy exceeds $50,000.00

II. PRELIMINARY ALLEGATIONS COMMON TO ALL COUNTS

4. Plaintiff was until the events herein alleged began in 1983 the co-owner of and a teacher at the Virginia McMartin Preschool ("Preschool") in Manhattan Beach, California. The Preschool and plaintiff enjoyed unblemished reputations and prestige for providing education and care for preschool aged children, and were duly licensed to do so.

5. Plaintiff is informed and believes that at some time in 1983, Judy Johnson ("Johnson"), a parent of a former Preschool student, told the Police Department of defendant CITY OF MANHATTAN BEACH ("CITY") that her son had been sexually molested at the Perschool at some unspecified time in the past. Plaintiff is informed and

believes that the police department had received prior complaints from the same parent which had turned out to be false and fabricated, and that they further knew that Johnson recently had been released from a mental health institution where she had been confined for paranoia and other mental and emotional infirmities, but the police nonetheless began a purported child abuse investigation without any attempt to inform the Preschool or the teaches of the allegations against them. The initial efforts of the police in this regard included sending a letter to parents of all Preschool children advising them that their children might have been molested at the Preschool, which caused panic and dismay among the parents and substantial injuries to the reputation of plaintiff and the Preschool by the reckless implications of misconduct.

6. At some point after CITY's purported child abuse investigation began, but prior to the indictments identified below, CITY received the active assistance of Defendant COUNTY OF LOS ANGELES ("COUNTY"), a political subdivision of the State of California, through COUNTY's Sheriff's Department and District Attorney's Office, who like CITY did not conduct their own or an independent investigation of the allegations of child abuse.

7. Plaintiff is further informed and believes that at the suggestion of COUNTY, CITY retained defendant CHILDREN'S INSTITUTE INTERNATIONAL ("CII"), formerly Big Sisters' League, to interview, examine, interrogate and evaluate the alleged victims of child abuse, and report initially to CITY, and later after criminal proceedings had been initiated, to COUNTY, whether child abuse had occurred and who the perpetrators were. Plaintiff is

informed and believes that CII in turn, by and through its duly authorized officers and agents, delegated the aforesaid tasks to its officials Astrid Heger ("Heger") and Bruce Woodling ("Woodling"), who in turn delegated actual work with children to defendant KATHLEEN "KEE" MACFARLANE ("MACFARLANE"), and others not now specifically known to plaintiff.

8. Plaintiff is informed and believes that CII is a California non-profit corporation which holds itself out to the public as an independent, professional and objective organization that is expert at the task of assessing whether in fact child abuse has occurred, the nature thereof and the identity of the perpetrators, as well as conducting treatment and therapy. Plaintiff is further informed and believes that the employees of COUNTY and CITY responsible respectively for recommending and retaining CII were not adequately trained or supervised: (1) to determine whether such a reference was necessary or desirable, (2) to determine the qualifications of CII or its agents and employees to perform the duties delegated to them, or (3) to evaluate the information produced by CII. The delegation of substantially all investigatory duties to CII and failure to supervise CII by CITY and later COUNTY was in violation of published manuals and procedures which were in accordance with mandatory State of California policy for such investigations under Penal Code Sections 13823.5 and 11166 *et seq.*, as in effect at the time, adopted for their direction and control by the relevant state authorities and constituting a rule of law as defined in Government Code Section 811.6. On the other hand, the manner of over-delegation and failure to supervise CII were pursuant to governmental policies of CITY

and later COUNTY to pursue this child abuse investigation in a manner which disregarded some state policies and plaintiff's rights, for example on confidentiality, for the political benefit of CITY, COUNTY and their officials (especially defendant ROBERT PHILOBOSIAN, who was running for election as District Attorney at the time, having been previously appointed to that post) through favorable publicity and media attention, while at the same time purporting to act pursuant to state law.

9. Subsequent to the attempted performance of its delegated task, but before the indictments identified below, CII reported to CITY and COUNTY its conclusions that numerous acts of child abuse had occurred at the Preschool, and that plaintiff, among others, was a perpetrator or probable perpetrator thereof, although CII had no contact with plaintiff nor specific knowledge about plaintiff at the time such report was made; and, CII had violated substantially all standards for interviewing alleged child abuse victims, including without limitation, unduly leading interrogation, coaching of statements, and intimidating children into making false and fantasized charges against plaintiff. Plaintiff is further informed and believes that CII and its agents and employees, including without limitation MACFARLANE, engaged in such improper activities because it was to their economic, personal and professional advantage to produce reports leading to indictments of plaintiff and others, as well as favorable publicity about themselves. Plaintiff is further informed and believes that CII was on the verge of closing its operations because of its financial instability at the time the Preschool investigation was delegated to it,

which motivated CII to "uncover" non-existent child abuse in order to perpetuate itself.

10. Plaintiff is informed and believes that some time in 1984, after CII's reports to CITY and COUNTY, defendant ROBERT PHILOBOSIAN ("PHILOBOSIAN"), the duly appointed and acting District Attorney of Los Angeles County and a candidate for election to that office, decided to present to the Grand Jury the name of plaintiff, among others, for indictment for the alleged child abuse at Preschool. Plaintiff is further informed and believes that PHILOBOSIAN based his decision upon the recommendations of CITY, the reports of CII, and MACFARLANE and the advice of agents and employees of CITY and COUNTY (none of whom had in fact conducted an actual or independent investigation of the alleged child abuse), and on his assessment of the value of the publicity attendant to an indictment under the circumstances present for his ongoing political campaign.

11. Subsequently in 1984, the Grand Jury indicted plaintiff and others on numerous counts of child abuse and related offenses in connection with the Preschool, based upon facts selected for presentation to the Grand Jury by PHILOBOSIAN and those acting under his direction and control, and after the suppression and mishandling of evidence that he, CITY and COUNTY knew then would have been exculpatory of plaintiff, including without limitation, the truth with respect to the initial complaining witness described above in paragraph 5.

12. Thereafter, plaintiff was subjected to arrest and booking procedures, as well as further purported investigation throughout the period 1984 to 1986, re-arrest, and

all amid tremendous amounts of publicity, official statements and pronouncements about plaintiff's guilt for child molestations, which were generated by CITY, COUNTY, PHILOBOSIAN, CII and others acting in concert with them and which continued unabated throughout the criminal proceedings against plaintiff up to 1990.

13. Plaintiff was subjected to additional pre-trial proceedings and eighteen (18) months of preliminary hearings which terminated in 1986, but did not have the opportunity therein to litigate the issues raised in this complaint because of the acts of defendants in concealing evidence of their own misconduct as alleged herein, which included fabricating evidence against plaintiff and suppressing evidence in her favor.

14. At the conclusion of the preliminary hearing, plaintiff was bound over for trial and did not at that time know the nature of the misconduct of defendants in fabricating evidence, suppressing evidence and suborning perjury against her, although she maintained her innocence of the charges.

15. Each defendant is believed to have been the agent of each of the other defendants and acting within the course and scope of such agency with respect to the matters herein alleged, except where the contrary is specifically pleaded.

16. Within 100 days after her acquittal and the dismissal of the criminal charges against plaintiff, plaintiff filed claims with COUNTY and CITY alleging essentially the same facts as alleged throughout this complaint, claiming continuing tortious conduct by COUNTY and CITY from 1983 through 1990, under the California Tort Claims Act,

Government Code Sections 911 et seq., and those claims have been rejected or will be rejected or deemed rejected.

17. Plaintiff was disabled from filing an earlier claim by the circumstances of the criminal prosecution, the publicity, the damages suffered and the combined acts of defendants to prevent plaintiff from ascertaining the truth about such defendants' conduct and being able to take action thereon at least up until the conclusion of the criminal case against her, under a totality of circumstances which would have in any event rendered any additional claim filing an idle act, and prevented plaintiff's adequate knowledge of the claim. Plaintiff further alleges that any impediment to this action based on alleged failure to comply with government claims presentation requirements is invalid on the ground that such procedures as applied deny plaintiff equal protection of the laws and due process, especially under the 5th Amendment to the United States Constitution's prohibition against requiring a criminal defendant to engage in self-incrimination.

III. FIRST COUNT VIOLATION OF CIVIL RIGHTS UNDER 42 U.S.C. 1983

18. Paragraphs 1 through 17 above are incorporated in this paragraph by this reference; and plaintiff alleges as follows against each of the defendants.

19. This cause of action arises under 42 U.S.C. Section 1983, and seeks to hold defendants, who, plaintiff is informed and believes, at all times here relevant were persons acting under color of state law or in concert with persons acting under color of state law, responsible for

their deprivation of plaintiff's rights, privileges and immunities secured by the statutes and Constitution of the United States. Defendants' acts were either for the intentional purpose of violating plaintiff's rights, or with deliberate indifference toward such rights, and were pursuant to governmental policies of CITY and COUNTY regarding handling child abuse cases in a manner which disregarded the rights of the putative defendant and maximized public exposure and publicity, especially as those policies were applied to plaintiff. The specific facts of the policy upon which this cause of action is based were not discovered until within one year preceding the filing of this action, and could not have been earlier discovered despite reasonable diligence because of defendants' acts oppressing plaintiff and suppressing evidence of their own misconduct.

20. Plaintiff is informed and believes that the specific misconduct of defendants CITY, COUNTY and PHILOBOSIAN at issue, joined in by the other defendants, includes without limitation, the following which occurred and injured plaintiff continuously at virtually certain that such injuries would occur:

(1) failure to adequately train and supervise employees and delegatees, including CTIY's Police Department and MACFARLANE (who had no relevant academic, professional or technical license or credentials), with respect to child abuse and molestation investigations;

(2) issuing false and misleading statements to the news media regarding the progress of the investigation

and trial, and regarding the state of the supposed evidence against plaintiff for the purpose of enhancing defendants' public image and gaining unfair advantage over plaintiff at trial; and for similar purposes, causing information subject to court protective orders to be leaked to the media;

(3) attempting to intimidate plaintiff's co-defendants in the criminal proceeding so as to produce from them a false confession implicating plaintiff; *e.g.*, causing co-defendant Babette Spitler's children to be arrested, removed from the care of relatives and detained incommunicado as leverage for a plea bargain and testimony from Spitler implicating plaintiff;

(4) fabricating evidence against plaintiff, suppressing evidence in favor of plaintiff, and suborning perjury and/or perjury; and,

(5) interfering with plaintiff's ability to practice her profession as a teacher, and her ability to reestablish her business by publishing and re-publishing, for the purposes of such interference, to the general public and administrative licensing bodies within a year preceding the filing of this action, the allegations against plaintiff of child abuse which defendants knew to be false.

21. The rights, immunities and privileges of plaintiff violated by defendants and each of them include without limitation, the rights to privacy, due process, equal protection and a fair trial secured by the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution, as well as Article I, Section 7 of the California Constitution.

22. Plaintiff was injured in her rights and feelings, and lost employment and income by the aforesaid acts and omissions of duty by defendants and each of them, and was deprived of her preschool business for the same reason, incurring damages in an amount in excess of $1 million.

IV. SECOND COUNT COMMON LAW CONSPIRACY – AGAINST ALL DEFENDANTS

23. Paragraphs 1 through 17, and 19 through 22 above are incorporated in this paragraph by this reference, and plaintiff further alleges against all defendants on information and belief:

24. In late 1983 or early 1984, prior to any action taken by CITY or COUNTY with respect to initiation of a criminal prosecution of plaintiff, persons employed by CITY, COUNTY and CII, including MACFARLANE, and other individuals not so employed, believed to include CAPITAL CITIES/ABC, INC. reporter defendant WAYNE T. SATZ, entered into an informal agreement among themselves to conduct and publicize an investigation of allegations of child abuse at the McMartin Preschool in such a way as to predetermine the outcome of the investigation of those allegations and produce indictments of plaintiff and others, even though the defendants and others involved knew those allegations were false and that they would be depriving plaintiff of her civil rights such as the right to a fair trial. The defendants joined in and agreed to the conspiracy and its purposes as it proceeded and prior to indictment of plaintiff, including defendant PHILOBOSIAN, and each continued to actively participate

therein at least up until early 1986; each continued to passively support the conspiracy through failure to disclose its nature and existence and acceptance of the economic and professional benefits therefrom through 1990; and, CITY, COUNTY, CII and MACFARLANE actively participated in furthering the conspiracy at least up through 1990 to plaintiff's acquittal.

25. Each of the defendants named in this cause of action agreed, conspired and acted for the purpose of violating plaintiff's civil rights as set forth in the Constitution and laws of the United States and the State of California, including without limitation, the 4th, 5th and 14th Amendments to the U.S. Constitution, 42 U.S.C. Section 1983, and Article I, Section 7 of the California Constitution, and related laws which guaranteed plaintiff due process, equal protection and a fair trial on the criminal charges defendants caused to be filed against her. Each defendant participated in the conspiracy for personal, professional, economic or political gain and did so gain from plaintiff's injuries.

26. The specific misconduct engaged in by each defendant in pursuit of the conspiracy included, without limitation, conspiring to and fabricating evidence against plaintiff, suppressing evidence favorable to plaintiff, suborning perjury and/or committing perjury while testifying, and making knowingly false and misleading public statements and press releases so as to prejudice plaintiff and present her in a false light as a depraved person unfit to be near small children. In addition, each defendant agreed with each other defendant to conduct and they did jointly conduct the investigation into child abuse at Preschool and subsequent prosecution in a manner that

recklessly disregarded and had deliberate indifference toward the rights and feelings of plaintiff, by excessive publicity, overdelegation of authority and responsibility for the purported investigation and interviews of the child witnesses, lack of supervision of inadequately trained personnel, failure to follow established procedures for protection of the alleged victims and perpetrators, encouraging parents to make false or exaggerated claims of child abuse in exchange for promises of public funds for crime victims, and other means that made injury to plaintiff's rights virtually certain.

27. The agreement and overt acts of the defendants were not protected by privilege or immunity because they commenced prior to initiation of any prosecution, and included excessive publicity generated by false and misleading public announcements by each of the defendants throughout the investigation and prosecution, with the specific intent to hide defendants' own misconduct and to deprive plaintiff of the right to a fair trial and to resume her chosen profession.

28. The facts regarding the conspiracy alleged were discovered within one year preceding the filing of this action, and could not have been earlier discovered despite reasonable diligence because of the efforts and success of defendants in manipulating and controlling the information available to plaintiff and the public abut the evidence for and against plaintiff, as well as defendants' role with respect thereto.

29. The conspiracy described above injured plaintiff as alleged in paragraph 22. Plaintiff further alleges against defendants other than CITY and COUNTY that in doing

the acts described above, each defendant acted with malice in intending to cause plaintiff's injuries, and knew and observed the extent of her emotional and other injuries from their acts and omissions of duty; each defendant's conduct was despicable, particularly given their public and professional positions and duties; their acts were wilful and with a conscious disregard and indifference for plaintiff's rights and feelings, and subjected her to cruel and unjust hardship, pain, shock, nausea and humiliation, entitling her to exemplary damages according to proof for sake of example and by way of punishing each defendant other than CITY and COUNTY.

V. THIRD COUNT MALICIOUS PROSECUTION – AGAINST CAPITAL CITIES/ABC, INC., WAYNE T. SATZ, CII and KATHLEEN MACFARLANE

30. Paragraphs 1 through 17, and 24 through 26, are incorporated in this paragraph by this reference, and plaintiff alleges as follows against all defendants except CITY OF MANHATTAN BEACH, COUNTY OF LOS ANGELES and ROBERT PHILOBOSIAN:

31. Plaintiff is informed and believes that each defendant was instrumental in procuring the prosecution of plaintiff because each had the ability to control the flow of information regarding the investigation to the public, the press, the police, the prosecutors, the grand jury and the courts and each was familiar with the facts regarding plaintiff's innocence, the falsity of the allegations against her, and the methods used to obtain incriminating statements from the alleged victims of child abuse. Each defendant actively assisted in presenting or suppressing

such information by either committing perjury, suborning perjury, fabricating information, hiding it, selectively leaking it to the press or publicizing it so as to produce an indictment and trial of plaintiff for child molestation, even though each defendant knew that there was in fact no probable cause to believe defendant guilty of such charges and had no honest or reasonable good faith belief in the existence of probable cause.

32. Each defendant acted maliciously out of motives of personal, professional and/or economic gain, as appropriate to whether it was an individual or an organization, at the expense of plaintiff's injuries and with the knowledge and intent that plaintiff would be injured in her reputation, feelings and economic welfare. Further, defendants CII and CAPITAL CITIES/ABC, INC. knew or should have known of each of the wrongful activities of their respective employees, KATHLEEN "KEE" MACFARLANE and WAYNE T. SATZ as herein alleged, but failed to take any action to prevent or restrain them from causing harm to plaintiff, accepted economic benefits from their activities as described herein, and by action and inaction ratified and approved their wrongful conduct.

33. Notwithstanding the prosecution maliciously procured by defendants, the criminal proceedings were terminated in plaintiff's favor in early 1990 by acquittal of all charges.

34. As a result of such malicious prosecution, plaintiff has suffered anguish, anger, shock, public disgrace and humiliation, loss of employment and income and incurred attorney's fees and court costs in an amount in

excess of $1 million. In addition, plaintiff seeks exemplary damages for each defendant's malicious, intentional, deliberate, wilful and despicable disregard of her rights and feelings, for sake of example and by way of punishing defendants.

VI. FOURTH COUNT DEFAMATION - AGAINST ALL DEFENDANTS

35. Paragraphs 1 through 17, 24 and 26 are incorporated in this paragraph by this reference, and plaintiff alleges as follows against all defendants as follows:

36. This action is not barred by Civil Code Section 48.7a because the prosecution of plaintiff for child abuse terminated before this action was filed; nor, because of that section could this action have been filed prior to dismissal of such charges. This action is not barred by the provisions of Penal Code Section 11166 et seq. with respect to any defendant connected with CII or claiming an immunity based on agency or employment by CII because the actions alleged herein were not reports of child abuse but investigative and other non-reporting activities. In addition, in 1986, CII through a spokesperson publically denied on a nationwide television broadcast that its activities challenged herein had been conducted pursuant to or for the purposes of producing a report protected under that [sic] those statutes; and further, the allegations herein include publication of the information which those statutes are designed to keep confidential.

37. Plaintiff is informed and believes that each of the defendants joined in and republished to numerous persons in this county each of the defamatory statements herein alleged, as well as others not now specifically known to plaintiff, and continued to do so from some time in 1983 or 1984 prior to the bringing of the criminal charges of alleged child abuse against plaintiff, up to and including times after the criminal charges were formally dismissed against plaintiff in 1990. Plaintiff is informed and believes that such false and defamatory statements were made or joined in both within the course and scope of each individual defendant's employment and outside such course and scope, for example, in connection with administrative proceedings concerning plaintiff's professional credentials after termination of the criminal proceedings. Plaintiff is further informed and believes that defendant PHILOBOSIAN made such statements both within and outside the scope of his office as District Attorney and made some such statements purely for personal, professional and political advantage in 1986 after he had left that office.

38. Plaintiff is informed and believes that the defamatory statements alleged consisted of both written and oral statements from each of the defendants which stated in essence that plaintiff had been involved in illegal sexual activity with numerous small children at Preschool for an extended period of time, was involved in child abuse, child molestation, and child pornography, and violated sections of the Penal Code forbidding such activities; that plaintiff had committed various sexual assaults on children, threatened and intimidated them; participated in Satanic rituals with children, mutilated dead and live

animals; and committed other disgusting and repulsive sexual acts. Plaintiff is informed and believes that each defendant falsely stated to the public that numerous children had specifically identified plaintiff as a perpetrator of the foregoing offenses, including statements by defendants CAPITAL CITIES/ABC, INC. and/or WAYNE T. SATZ on multiple, sometimes daily, nationwide media broadcasts from 1984-1990. Plaintiff is informed and believes that defendant CAPITAL CITIES/ABC, INC. has possession and control of copies of each such defamatory broadcast by itself and WAYNE T. SATZ. Each of the defendants either directly participated in, or assisted others in preparing for or setting up and choreographing interviews and interrogations of alleged victims or witnesses and others who were deliberately questioned in such a way as to expressly or impliedly accuse plaintiff of involvement in heinous sexual conduct related to children, even though the actual interrogators and the other assisting defendants knew such allegations were the false and fabricated product of the interrogation methods.

39. The publications were made in this county, of and concerning plaintiff and were so understood by those who heard and read them from 1983 to 1990, including plaintiff's friends, neighbors and professional colleagues, and parents of students who attended the Preschool.

40. All of the publications, accusations and innuendo were false, and false as they pertained to plaintiff, as to whom the truth known to defendants was that she was a competent and caring professional who have never harmed or threatened to harm a child. Plaintiff took all reasonable steps within her ability to counteract such defamatory statements, including public demands for

retraction, withdrawal and correction which are herewith reasserted and have previously been asserted in writing, and any further requirement for mitigation is excused by the circumstances attending the extended criminal prosecution of plaintiff and defendants' oppressive conduct toward her.

41. The acts of each defendant caused plaintiff a loss of reputation, shame, mortification and shock, and required her to expend funds to retain attorneys to defend and advise her with regard to her rights, all such damages in an amount in excess of this court's jurisdictional minimum. Plaintiff also seeks special damages against defendants because their acts were specifically intended to cause and did cause the temporary or permanent destruction of plaintiff's ability to carry out her business or profession; caused loss of employment and income for the years 1983 through 1990 and continuing in an amount in excess of this court's jurisdictional minimum.

42. The publications by defendants from 1983 or 1984 through 1990 were malicious and made from ill-will toward plaintiff, with a conscious disregard for plaintiff's rights and feelings so as to capitalize at plaintiff's expense and for defendants' personal, political, professional and economic benefit on the public sentiment against child abusers and to satisfy defendants' selfish desires for notoriety and fame. Plaintiff therefore seeks punitive damages against defendants other than COUNTY for sake of example and by way of punishing each of such defendants.

PRAYER

THEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. General damages of $1 million and according to proof on the First, Second, Third and Fourth Counts;

2. Attorneys' fees on the First and Third Counts according to proof;

3. Special damages according to proof on the Fourth count;

4. Prejudgment interest on damages as allowed by law;

5. Such other and further relief as the court deems proper.

Dated: January 19, 1990

JAMES H. DAVIS
A Law Corporation
By _____
JAMES A. QUINN
Attorneys for Plaintiff
PEGGY MCMARTIN BUCKEY

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury pursuant to Fed. Rules Civ. Pro., Rule 38(b).

Dated: January 19, 1990

JAMES H. DAVIS
A Law Corporation
By _____
JAMES A. QUINN
Attorneys for Plaintiff